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January 14, 2019

Via CERTIFIED MAIL – Return Receipt Requested
Lieutenant General Todd T. Semonite
Commanding General & Chief of Engineers
U.S. Army Corps of Engineers
441 G Street N.W.
Washington, D.C. 20314-1000

Re: NOTICE OF INTENT TO SUE THE U.S. ARMY CORPS OF ENGINEERS AND LIEUTENANT GENERAL SEMONITE UNDER THE CLEAN WATER ACT

Dear Lieutenant General Semonite:

This letter is to provide you with sixty days notice of Columbia Riverkeeper's ("Riverkeeper") intent to file a citizen suit against the United States Army Corps of Engineers and Lieutenant General Todd T. Semonite, in his official capacity as the Commanding General and Chief of Engineers of the United States Army Corps of Engineers (collectively, the "Corps"), under section 505 of the Clean Water Act ("CWA"), 33 U.S.C. § 1365, for the violations described herein. The CWA prohibits any person from discharging any pollutant to waters of the United States except as authorized by a National Pollutant Discharge Elimination System ("NPDES") permit. Continuing to discharge pollutants without securing an NPDES permit constitutes an ongoing violation of the CWA.

The Corps has and continues to violate section 301(a) of the CWA, 33 U.S.C. § 1311(a), by discharging pollutants to waters of the United States and to the State of Washington from the Chief Joseph Dam and from its associated structures and facilities (collectively "Dam").[1] Specifically, the Corps discharges oils, greases, other lubricants, and cooling water from the Dam without the authorization of an NPDES permit in violation of the CWA.

This notice of intent to sue is part of Riverkeeper's effort to protect people who rely on the Columbia River for uses including drinking water, food, and recreation. Riverkeeper's mission is to protect and restore the water quality of the Columbia River and all life connected to it, from the headwaters to the Pacific Ocean. The organization's strategy for protecting the

[1] The term "Dam," as used herein, includes the Chief Joseph Dam and all associated structures and facilities, including turbines, powerhouses, transformers, spillways, and cranes. The approximate location of the Dam is identified in Appendix 1.

Columbia River and its tributaries includes working in river communities and enforcing laws that protect public health, salmon, and other fish and wildlife.

I. Legal Background.

Washington's rivers, and the use of rivers by people, fish, and wildlife, are protected by both federal and state law. In 1972, Congress passed the CWA to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). The CWA is the cornerstone of surface water quality protection in the United States. In the forty years since its passage, the CWA has dramatically increased the number of waterways that are once again safe for fishing and swimming. Despite the great progress in reducing water pollution, many of the Nation's waters still do not meet the water quality goals. In fact, the vast majority of rivers and streams in Washington fail to meet basic state water quality standards for pollutants such as toxics and temperature.[2] These standards are designed to protect designated uses, including aquatic life, fishing, swimming, and drinking water.

The NPDES permitting scheme is the primary means by which discharges of pollutants are controlled. At a minimum, NPDES permits must include technology-based effluent limitations, any more stringent limitations necessary to meet water quality standards, and monitoring and reporting requirements. *See* 33 U.S.C. §§ 1311, 1342, 1318. Every year, EPA and the state of Washington issue hundreds of permits for pollution discharges into the Columbia and Snake Rivers. These include permits that regulate the discharge of toxic pollution, hot water, bacteria, and other pollutants. According to EPA, improvements to the quality of water in our rivers are directly linked to the implementation of the NPDES program and the associated control of pollutants discharged from both municipal and industrial point sources.[3]

II. The Heavy Toll of Pollution on the Columbia River.

The Columbia River is one of the West's greatest river systems. This river supports rich fishing traditions, provides water for communities and agriculture, recreation opportunities, and power for hydroelectric dams. The river is also severely degraded by pollution. Toxic pollution threatens the health of people that eat local fish and jeopardizes the public's right to eat fish caught locally. Rising water temperatures also threaten the health of salmon and other aquatic life that rely on cool water for survival.

EPA designated the Columbia River Basin a Critical Large Aquatic Ecosystem in 2006 because toxic contamination and other pollution is so severe. In 2009, EPA released an in-depth report on toxic pollution in the Columbia, the *Columbia River Basin: State of River Report for*

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[2] *See* State of Washington 303(d) List, available at https://ecology.wa.gov/Water-Shorelines/Water-quality/Water-improvement/Assessment-of-state-waters-303d; State of Oregon 303(d) List, available at https://www.deq.state.or.us/wq/assessment/rpt2010/results303d10.asp.

[3] U.S. EPA, *Water Permitting 101* at 11, http://www.epa.gov/npdes/pubs/101pape.pdf.

Toxics.[4] EPA's report concluded that harmful pollutants are moving up the food chain, impacting humans, fish, and wildlife. As the report explains, "[i]n 1992, an EPA national survey of contaminants in fish in the United States alerted EPA and others to a potential health threat to tribal and other people who eat fish from the Columbia River Basin." This survey prompted further study on the contaminated fish and the potential impacts on tribal members.

In particular, EPA funded four Columbia River tribes, through the Columbia River Intertribal Fish Commission ("CRITFC"), to study contaminant levels in fish caught at traditional fishing sites.[5] The study demonstrated the presence of 92 toxic chemicals in fish consumed by tribal members, resulting in a 50-fold increase in cancer risk among tribal members whose diets rely on river-caught fish. Contaminants found in these fish include PCBs, dioxins, furans, arsenic, mercury, and DDE, a toxic breakdown product of DDT.[6]

The CRITFC study is not alone in demonstrating the serious problem of toxic contamination. From 1989 to 1995, the Lower Columbia River Bi-State Water Quality Program ("Bi-State Program") generated substantial evidence demonstrating that water and sediment in the Lower Columbia River and its tributaries have levels of toxic contaminants that are harmful to fish and wildlife.[7] The Bi-State Program concluded that:

- Dioxins and furans, metals, PCBs, PAHs, and pesticides impair the water sediment, and fish and wildlife;
- Arsenic, a human carcinogen, exceeded both EPA ambient water criteria for protection of human health and the EPA human health advisories for drinking water;
- Beneficial uses such as fishing, shellfishing, wildlife, and water sports are impaired;
- Many toxic contaminants are moving up the food chain and accumulating in the bodies of animals and humans that eat fish;
- People who eat fish from the lower Columbia over a long period of time are exposed to health risks from arsenic, PCBs, dioxins and furans, and DDT and its breakdown products.[8]

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[4] U.S. EPA, *Columbia River Basin State of River Report for Toxics* (hereafter *State of the River Report*) (January 2009), https://www.epa.gov/columbiariver/2009-state-river-report-toxics).

[5] *Id.* at 3.

[6] *Id.* at 19.

[7] Lower Columbia River Estuary Partnership. 2007. *Lower Columbia River and Estuary Ecosystem Monitoring: Water Quality and Salmon Sampling Report* at 1.

[8] *Id.* at 5 - 6.

Other studies have confirmed and added to the overwhelming scientific evidence on toxic contamination in the Columbia River Basin.[9]

Pollution discharges from the Corps' Dam contribute to the pollution crisis on the Columbia River. According to the National Oceanic & Atmospheric Administration ("NOAA"):

> Spilled oil can harm living things because its chemical constituents are poisonous. This can affect organisms both from internal exposure to oil through ingestion or inhalation and from external exposure through skin and eye irritation. Oil can also smother some small species of fish or invertebrates and coat feathers and fur, reducing birds' and mammals' ability to maintain their body temperatures.[10]

The impacts of oil pollution are sobering. Yet the Corps discharges oil and other pollution from the Dam without the NPDES permit authorization required by the CWA. In turn, the Corps fails to monitor and report pollution in a manner that enables the public to fully understand the extent and severity of the problem.

The Dam also discharges heat in the form of cooling water to a river system recognized by EPA as too warm to support designated uses, including salmon habitat. Salmon need cool water to survive. Nearly two decades ago, federal scientists declared the Columbia River too hot for healthy salmon runs. Hot water pollution from point sources, including the Dam, contributes to elevated water temperatures in the Columbia River. Specifically, the Corps uses water to cool a variety of Dam components and materials, including turbines, generators, transformers, and lubricating oils. The Corps discharges this cooling water directly to the Columbia River.

The devastating impact of hot water pollution on the Columbia River is not hypothetical. Northwest rivers had unreasonably high temperatures in summer 2015, warm enough to kill thousands of migrating sockeye salmon headed to the mid-Columbia and lower Snake Rivers. Scientists estimate that more than 277,000 sockeye, about 55 percent of the total run, returning from the ocean to spawn died in the Columbia and Snake Rivers due to warm water temperatures in 2015. The Fish Passage Center, which provides technical assistance and information to fish and wildlife agencies, concluded that higher water temperatures in the Columbia and Snake Rivers are largely due to dams.[11] Dams heat the river by decreasing river flow and creating huge,

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[9] *Id.* at 6 (citing studies by USGS, the U.S. Army Corps of Engineers, DEQ, and others); *see generally* U.S. EPA, *State of the River Report*.

[10] NOAA, Office of Response and Restoration, *How Oil Effects Fish and Wildlife in Marine Environments,* http://response.restoration.noaa.gov/oil-and-chemical-spills/oil-spills/how-oil-harms-animals-and-plants-marine-environments.html.

[11] Fish Passage Center, Memorandum on Water Temperature Issues in The Columbia and Snake Rivers (Oct. 28, 2015), http://www.fpc.org/documents/memos/159-15.pdf.

stagnant reservoirs.[12] The Corps discharges cooling water from the Dam, which contributes warm water to a river that is already too warm to support healthy fish populations.

III. Unpermitted Pollutant Discharges from the Dams.

Section 301(a) of the CWA prohibits discharges of oils, greases, lubricants, cooling water, and other pollutants to the Columbia River from the Dam without NPDES permit authorization. 33 U.S.C. § 1311(a). Without an NPDES permit, the Corps is failing to monitor, report, and reduce pollution discharges pursuant to the CWA and state and federal implementing rules.

A. Chronic Pollutant Discharges from the Dam.

The Dam discharges oils, greases, lubricants, and other pollutants collected from various sources through sumps, including powerhouse drainage sumps, unwatering sumps, spillway sumps, and other systems. The Corps violates section 301(a) of the CWA by discharging pollutants from these various drainage and/or un-watering sumps and other systems at the Dam. These violations occurred each and every time the Corps made these discharges in the past six years and continue to occur.[13]

The Dam discharges cooling water, and the associated heat, used to cool a variety of Dam components and materials, including turbines, generators, transformers, and lubricating oils. The Corps is in violation of section 301(a) of the CWA by discharging cooling water, and the associated heart, from the Dam each and every day for the past six years.

The Dam utilizes Francis turbines, which discharge grease to the Columbia River. Wicket gates control the amount of water flowing through the turbines at the Dam. The Wicket gate bearings are lubricated with grease or another lubricant. This grease or lubricant is continuously fed into the bearings and discharged directly into surface waters. The Corps is in violation of section 301(a) of the CWA by discharging grease or lubricant from the bearings at each of the turbine wicket gates at the Dam each and every day for the past six years.

B. Acute Pollutant Discharges from the Dams.

The Corps violates section 301(a) of the CWA every time it discharges oil, a lubricant, or other pollutants to the Columbia River from the Dam. Riverkeeper requested public records detailing oil spills and other discharges from the Dam. Riverkeeper also reviewed the United

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[12] While government experts identify dams as a major source of heat pollution in the Columbia River, Riverkeeper's notice of intent to sue limits heat related discharge allegations to point source discharges of cooling water.

[13] The Corps is in the best position to know the specific location of the point sources (*i.e.* the structures that discharge pollutants from drainage sumps, unwatering sumps, spillway sumps, and other systems into the Columbia River) at the Dam.

Sates Coast Guard's National Response Center Website, which maintains a national database of oil spills. Table 1 describes reported acute pollution discharges from the Dam to the Columbia River during the last six years. Riverkeeper does not concede that the amount of pollution reported is, in fact, the amount of pollution actually discharged from the Dams.

Table 1
Chief Joseph Dam Reported Discharges

Reported Date of Discharge	Reported Pollutant Discharged	Reported Amount Discharged	Comments from Discharge Report
6/17/14	Oil	5-10 gallons	5-10 gallons spilled at hydraulic gate, no oil released outside of the dam; later estimated that only 1 gallon spilled and none reached the river.
9/3/14	Paint Primer	1 cup	Contractor spilled approximately 1 cup of paint primer into the Columbia River.
11/17/14	Hydraulic Oil	1 gallon	The oil spilled was an aromatic oil used as an antifreeze agent in the lines supporting the gates.
12/9/16	Petroleum-based Heat Transfer Fluid	Less than 10 gallons	Heat transfer fluid released from a gate seal heater system due to an unknown cause.
9/29/17	Transformer Oil	787 gallons spilled, unclear how much made it into the River.	Approximately 1,000 gallons of transformer oil spilled to containment and then to a sump. A skimmer has been placed in the sump, which has recovered some of the oil. The dam has also increased the water level in the sump to try to prevent the oil trapping in the sump from being discharged to the Columbia River.
10/5/17	Vegetable Oil	2 tablespoons, 20x20ft sheen	Water level adjustments were being made and resulted in a small release of oil.
12/11/17	Chevron Clarity ISO32 Hydraulic Oil	Sheen, 1 quart	Caller stated that a sheen of chevron clarity ISO32 hydraulic oil released from the water sump into the Columbia River. This was due to a leaking gate cylinder.
3/4/18	Group 2 Mineral Oil	10-20 gallons	While performing maintenance on a turbine, a pipe/line broke and spilled approximately 50 gallons of oil into mechanical workings. A drum skimmer and pad were used to recover 30-40 gallons. 10-20 gallons of oil remain in the draft tube and are scheduled to be released into the Columbia.
4/24/18	Diesel Oil	½ cup, 20x20ft sheen	Diesel oil to water due to a faulty o-ring.
5/1/18	Heat Transfer Fluid	1 gallon	Hydraulic oil spilled from a pipe associated with the dam's gate seal heating system.
6/6/18	Hydraulic Oil	Sheen, 1 gallon	Dam's barge leaked on the ramp hydraulic system. Caused a 60x60ft sheen.

IV. Public Documents Announce the Need for an NPDES Permit for Dam Discharges.

The Corps should be aware that the CWA prohibits its discharges of oil, greases, lubricants, cooling water, and other pollution to the Columbia River from the Dam absent an NPDES permit. Notably, Riverkeeper sued the Corps in 2012 for failing to obtain pollution discharge permits for eight other Columbia River and Snake River dams (Bonneville, The

Dalles, Ice Harbor, John Day, Little Goose, Lower Monumental, McNary, Lower Granite).[14] As the Corps is aware, that case was resolved in 2014 through a settlement agreement requiring the Corps to:

1. Apply to EPA for NPDES discharge permits;
2. Investigate using less harmful lubricants in dam equipment; and
3. Monitor the type and quantity of pollution being discharged into the rivers.[15]

The Corps applied for the NPDES permits for the dams subject to that settlement agreement and EPA is in the process of drafting permits for them. Furthermore, Riverkeeper reached a settlement with the United States Bureau of Reclamation ("Bureau") in 2017 that requires the Bureau to join its federal partners at the Corps to investigate replacing toxic oil at the Grand Coulee Dam, also on the Columbia River, with eco-friendly lubricants or switch to using non-lubricated equipment.[16] The Bureau also committed to apply for an NPDES permit for pollution discharges from the Grand Coulee Dam.

Although the Corps and the Bureau, agreed to apply for NPDES permits for the above dams, the Corps still has not applied for an NPDES permit for the Chief Joseph Dam.

Furthermore, EPA requires permits for the exact kinds of discharges occurring at the Dam. On April 27, 2018, EPA promulgated a draft NPDES General Permit for pollutant discharges from hydroelectric generating facilities in Idaho.[17] The draft permit authorizes five categories of discharges. The permit "establishes effluent limitations for:

1. pH, oil and grease, and monitoring requirements for temperature and flow for discharges of noncontact cooling water and equipment-related cooling water systems.
2. pH, oil and grease, and monitoring requirements for flow for discharges from equipment and floor drains.

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[14] COLUMBIA RIVERKEEPER, STOPPING OIL POLLUTION FROM DAMS, https://www.columbiariverkeeper.org/our-work-saving-salmon/stopping-oil-pollution-dams (last visited July 24, 2018).

[15] *Id.*

[16] COLUMBIA RIVERKEEPER, GRAND COULEE DAM SETTLEMENT, https://www.columbiariverkeeper.org/news/2017/1/grand-coulee-dam-settlement (last visited August 27, 2018).

[17] THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, NPDES FACT SHEET: WASTEWATER DISCHARGES FROM HYDROELECTRIC GENERATING FACILITIES GENERAL PERMIT (2018) available at https://www.epa.gov/sites/production/files/2018-04/documents/r10-npdes-idaho-hydroelectric-gp-idg360000-fact-sheet-2018.pdf

3. pH, oil and grease, and monitoring requirements for flow for discharges from equipment and facility maintenance–related water.
4. pH, oil and grease, and monitoring requirements for flow for discharges from maintenance-related water during flood/high water events and equipment related back wash water from strainer screens.
5. pH, oil and grease, and monitoring requirements for flow and temperature for discharges from any combination of the following: equipment-related cooling water, equipment and floor drain water, maintenance-related water, maintenance-related water from flood/high water events and for equipment related backwash strainer water."[18]

According to the EPA:

> Most discharges that affect water quality are ancillary to the direct process of generating electricity at a hydroelectric facility and result mostly from oil spills, equipment leaks, and improper storage. The General Permit is proposing to require development and implementation of a Best Management Practices (BMP) Plan to minimize or eliminate the discharge of oil and grease and an annual self-certification report demonstrating compliance with the BMP Plan.[19]

In short, the Corps has been aware since long before this notice of intent to sue letter that discharges associated with the Dam require an NPDES permit. Yet, based upon the information available to Riverkeeper, the Corps has neither applied for nor obtained an NPDES permit for discharges of oils, greases, lubricants, cooling water, and other pollution from the Dam.

V. Party Giving Notice of Intent to Sue.

The full name, address, and telephone number of the party giving notice is:

Columbia Riverkeeper
407 Portway Ave. Suite 301
Hood River, OR 97031
(541) 387-3030

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[18] *Id.* at 14.

[19] *Id.* at 15.

VI. Attorneys Representing Riverkeeper.

The attorneys representing Riverkeeper in this matter are:

Brian A. Knutsen
Kampmeier & Knutsen, PLLC
221 S.E. 11th Ave., Suite 217
Portland, Oregon 97214
(503) 841-6515
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Lauren Goldberg, Legal and Program Director
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Simone Anter, Associate Attorney
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Hood River, OR 97031
(541) 399-5312
simone@columbiariverkeeper.org

VII. Conclusion.

The violations described herein reflect those indicated by the information currently available to Riverkeeper. Riverkeeper intends to sue for all violations, including those yet to be uncovered and those committed after the date of this notice of intent to sue.

Riverkeeper intends to seek injunctive relief to prevent further CWA violations under sections 505(a) and (d) of the CWA, 33 U.S.C § 1365(a) and (d), and such other relief as is permitted by law. Riverkeeper will further seek to recover its litigation expenses as authorized by section 505(d) of the CWA, 33 USC § 1365(d).

Riverkeeper believes that this notice of intent to sue sufficiently states grounds for filing suit. Riverkeeper intends to file a citizen suit against the United States Army Corps of Engineers and Lieutenant General Todd T. Semonite, in his official capacity as the Commanding General and Chief of Engineers of the United States Army Corps of Engineers, under section 505(a) of the CWA, 33 U.S.C. § 1365(a), for the violations described herein at the expiration of the sixty-day notice period or shortly thereafter.

Riverkeeper is willing to discuss effective remedies for the violations addressed in this notice of intent to sue letter and appropriate settlement terms. Please direct all correspondence to Brian A. Knutsen at (503) 841-6515 or brian@kampmeierknutsen.com.

Very truly yours,

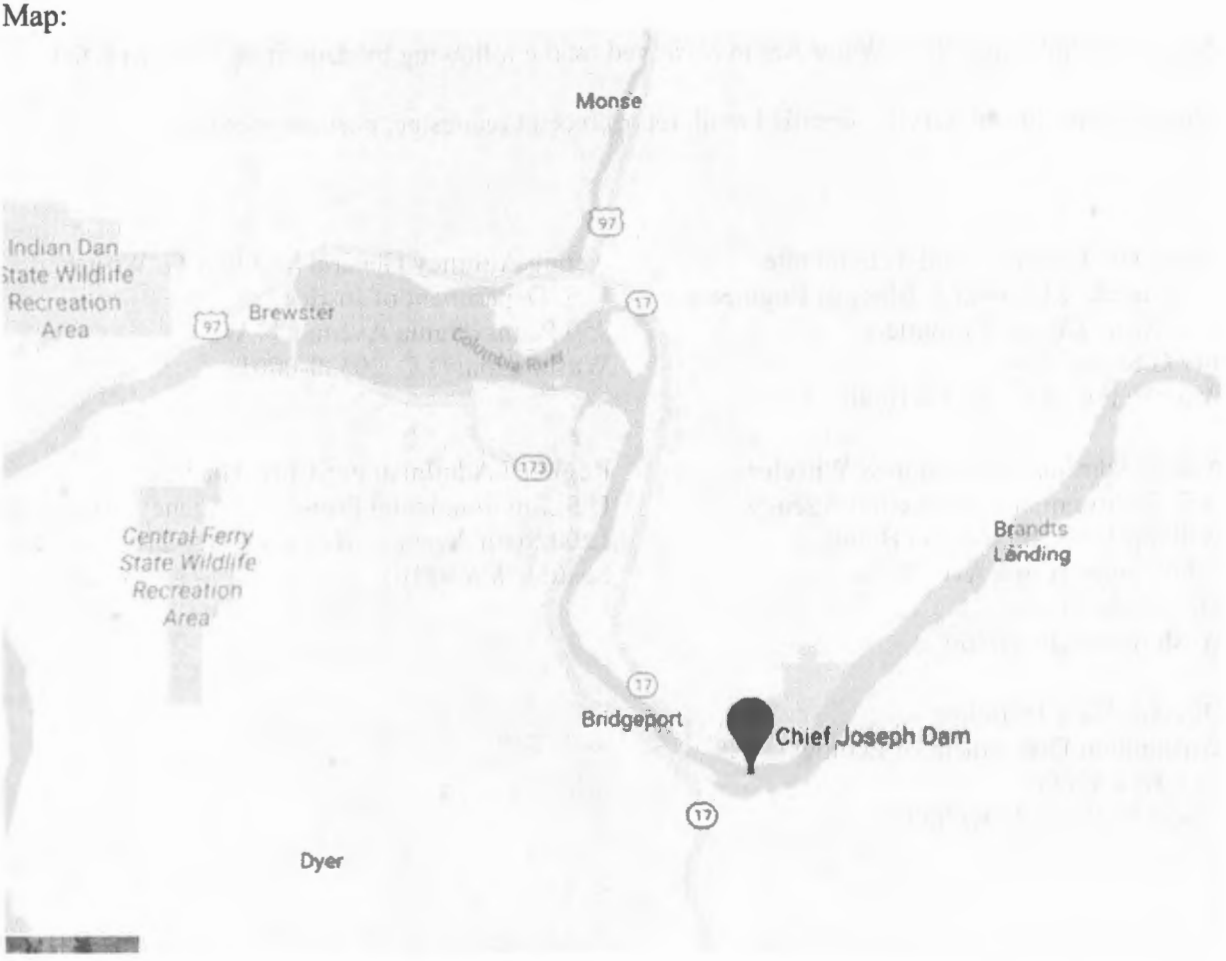
KAMPMEIER & KNUTSEN, PLLC

By: _____
Brian A. Knutsen
Lauren Goldberg
Simone Anter

APPENDIX I

Chief Joseph Dam: Bridgeport, Washington 98813
Coordinates: 47°59′43″N 119°38′04″W

Map:



CERTIFICATE OF SERVICE

I, Brian A. Knutsen, declare under penalty of perjury of the laws of the United States that I am counsel for Columbia Riverkeeper and that on January 14, 2019, I caused copies of the foregoing Notice of Intent to Sue the U.S. Army Corps of Engineers and Lieutenant General Semonite Under the Clean Water Act to be served on the following by depositing them with the United States Postal Service, certified mail, return receipt requested, postage prepaid:

Lieutenant General Todd T. Semonite
Commanding General & Chief of Engineers
U.S. Army Corps of Engineers
441 G Street N.W.
Washington, D.C. 20314-1000

Acting Attorney General Matthew G. Whitaker
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Acting Administrator Andrew Wheeler
U.S. Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Ave., N.W.
Mail Code 1101A
Washington DC 20460

Regional Administrator Chris Hladick
U.S. Environmental Protection Agency, Region 10
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